

1 Charles T. Sheldon Bar No. 155598
E-mail: charles.sheldon@sdma.com
2 Michael L. Fox Bar No. 173355
E-mail: michael.fox@sdma.com
3 SEDGWICK, DETERT, MORAN & ARNOLD LLP
One Market Plaza
4 Steuart Tower, 8th Floor
San Francisco, California 94105
5 Telephone: (415) 781-7900
Facsimile: (415) 781-2635

6 Marsha M. Piccone (pro hac vice pending)
piccone@wtklaw.com
7 John M. Fitzpatrick (pro hac vice pending)
fitzpatrick@wtklaw.com
8 Galen D. Bellamy (SBN #231792)
bellamy@wtklaw.com
9 Renee A. Carmody (pro hac vice pending)
carmody@wtklaw.com
10 WHEELER TRIGG KENNEDY LLP
1801 California Street, Suite 3600
11 Denver, Colorado 80202
Telephone: (303) 244-1800
12 Facsimile: (303) 244-1879

13 Attorneys for Defendant
14 McKESSON CORPORATION

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17
18 PETER JAY GERBER and MIRIAM
GOLDBERG,

19 Plaintiff,

20 v.

21 BAYER CORPORATION AND BAYER
22 HEALTHCARE PHARMACEUTICALS,
INC.; BMC DIAGNOSTICS, INC.;
23 CALIFORNIA PACIFIC MEDICAL
CENTER; GENERAL ELECTRIC
24 COMPANY; GE HEALTHCARE, INC.;
GE HEALTHCARE BIO-SCIENCES
25 CORP.; McKESSON CORPORATION;
MERRY X-RAY CHEMICAL CORP.;
26 and DOES 1 through 35,

27 Defendants.
28

CASE NO. CV-07-05918-JSW

**MCKESSON CORPORATION'S ANSWER
TO COMPLAINT**

DEMAND FOR JURY TRIAL

JUDGE: Hon. Jeffrey S. White

MCKESSON CORPORATION'S ANSWER TO COMPLAINT

Defendant McKESSON CORPORATION ("McKesson") answers Plaintiffs' Complaint as follows:

PARTIES

1. McKesson denies the allegations contained in Paragraph 1.
2. Paragraph 2 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies the same.
3. Paragraph 3 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies the same.
4. Paragraph 4 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies the same.
5. Paragraph 5 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies the same.
6. Paragraph 6 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies the same.
7. Paragraph 7 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph

1 7 and therefore denies the same.

2 8. Paragraph 8 is directed towards other defendants and thus requires no response; to
3 the extent this allegation requires a response from McKesson, McKesson is without knowledge
4 or information sufficient to form a belief as to the truth of the allegations contained in Paragraph
5 8 and therefore denies the same.

6 9. Paragraph 9 is directed towards other defendants and thus requires no response; to
7 the extent this allegation requires a response from McKesson, McKesson is without knowledge
8 or information sufficient to form a belief as to the truth of the allegations contained in Paragraph
9 9 and therefore denies the same.

10 10. Paragraph 10 is directed towards other defendants and thus requires no response;
11 to the extent this allegation requires a response from McKesson, McKesson is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
13 Paragraph 10 and therefore denies the same.

14 11. Paragraph 11 is directed towards other defendants and thus requires no response;
15 to the extent this allegation requires a response from McKesson, McKesson is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
17 Paragraph 11 and therefore denies the same.

18 12. Paragraph 12 is directed towards other defendants and thus requires no response;
19 to the extent this allegation requires a response from McKesson, McKesson is without
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
21 Paragraph 12 and therefore denies the same.

22 13. Paragraph 13 is directed towards other defendants and thus requires no response;
23 to the extent this allegation requires a response from McKesson, McKesson is without
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
25 Paragraph 13 and therefore denies the same.

26 14. Paragraph 14 is directed towards other defendants and thus requires no response;
27 to the extent this allegation requires a response from McKesson, McKesson is without
28 knowledge or information sufficient to form a belief as to the truth of the allegations contained in

1 Paragraph 14 and therefore denies the same.

2 15. Paragraph 15 is directed towards other defendants and thus requires no response;
3 to the extent this allegation requires a response from McKesson, McKesson is without
4 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
5 Paragraph 15 and therefore denies the same.

6 16. Paragraph 16 is directed towards other defendants and thus requires no response;
7 to the extent this allegation requires a response from McKesson, McKesson is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
9 Paragraph 16 and therefore denies the same.

10 17. Paragraph 17 is directed towards other defendants and thus requires no response;
11 to the extent this allegation requires a response from McKesson, McKesson is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
13 Paragraph 17 and therefore denies the same.

14 18. McKesson is without knowledge or information sufficient to form a belief as to
15 the truth of the allegations contained in Paragraph 18 and therefore denies the same.

16 19. Paragraph 19 is directed towards other defendants and thus requires no response;
17 to the extent this allegation requires a response from McKesson, McKesson is without
18 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
19 Paragraph 19 and therefore denies the same.

20 20. McKesson admits that it is a distributor of pharmaceutical and medical supply
21 products, including Omniscan™. Except as specifically admitted, McKesson is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
23 Paragraph 20 and therefore denies the same.

24 21. McKesson admits that it is a Delaware corporation with its principal place of
25 business at One Post Street, San Francisco, California, 94104.

26 22. McKesson admits that it conducts business in the State of California and in the
27 City and County of San Francisco. Except as admitted, McKesson is without knowledge or
28 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22

1 and therefore denies the same.

2 23. McKesson admits that it conducts business in the State of California and in San
3 Francisco County and that it is a distributor of pharmaceutical and medical supply products,
4 including Omniscan™. Except as admitted, McKesson denies the allegations contained in
5 Paragraph 23.

6 24. Paragraph 24 is directed towards other defendants and thus requires no response;
7 to the extent this allegation requires a response from McKesson, McKesson is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
9 Paragraph 24 and therefore denies the same.

10 25. Paragraph 25 is directed towards other defendants and thus requires no response;
11 to the extent this allegation requires a response from McKesson, McKesson is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
13 Paragraph 25 and therefore denies the same.

14 26. Paragraph 26 is directed towards other defendants and thus requires no response;
15 to the extent this allegation requires a response from McKesson, McKesson is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
17 Paragraph 26 and therefore denies the same.

18 27. Paragraph 27 is directed towards other defendants and thus requires no response;
19 to the extent this allegation requires a response from McKesson, McKesson is without
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
21 Paragraph 27 and therefore denies the same.

22 28. Paragraph 28 is directed towards other defendants and thus requires no response;
23 to the extent this allegation requires a response from McKesson, McKesson is without
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
25 Paragraph 28 and therefore denies the same.

26 29. Paragraph 29 is directed towards other defendants and thus requires no response;
27 to the extent this allegation requires a response from McKesson, McKesson is without
28 knowledge or information sufficient to form a belief as to the truth of the allegations contained in

1 Paragraph 29 and therefore denies the same.

2 30. McKesson is without knowledge or information sufficient to form a belief as to
3 the truth of the allegations contained in Paragraph 30 and therefore denies the same.

4 31. Paragraph 31 does not require a response. To the extent that a response is
5 required, McKesson denies the allegations contained in Paragraph 31.

6 32. McKesson is without knowledge or information sufficient to form a belief as to
7 the truth of the allegations contained in Paragraph 32 and therefore denies the same.

8 33. Paragraph 33 is directed towards other defendants and thus requires no response;
9 to the extent this allegation requires a response from McKesson, McKesson is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 Paragraph 33 and therefore denies the same.

12 34. Paragraph 34 is directed towards other defendants and thus requires no response;
13 to the extent this allegation requires a response from McKesson, McKesson is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
15 Paragraph 34 and therefore denies the same.

16 35. McKesson is without knowledge or information sufficient to form a belief as to
17 the truth of the allegations contained in Paragraph 35 and therefore denies the same.

18 36. Paragraph 36 is directed towards other defendants and thus requires no response.
19 In the alternative, McKesson is without knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in Paragraph 36 and therefore denies the same.

21 37. Paragraph 37 is directed towards other defendants and thus requires no response;
22 to the extent this allegation requires a response from McKesson, McKesson is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
24 Paragraph 37 and therefore denies the same.

25 38. Paragraph 38 is directed towards other defendants and thus requires no response;
26 to the extent this allegation requires a response from McKesson, McKesson is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
28 Paragraph 38 and therefore denies the same.

39. Paragraph 39 is directed towards other defendants and thus requires no response; to the extent this allegation requires a response from McKesson, McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 and therefore denies the same.

40. McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 and therefore denies the same.

41. Paragraph 41 does not require a response. To the extent that a response is required, McKesson denies the allegations contained in Paragraph 41.

42. Paragraph 42 does not require a response. To the extent that a response is required, McKesson denies the allegations contained in Paragraph 42.

FACTS

43. McKesson denies the allegations contained in Paragraph 43.

44. McKesson denies the allegations contained in Paragraph 44.

45. McKesson denies the allegations contained in Paragraph 45.

46. McKesson denies the allegations contained in Paragraph 46.

47. McKesson denies the allegations contained in Paragraph 47.

48. McKesson denies the allegations contained in Paragraph 48.

49. McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and therefore denies the same.

50. McKesson denies the allegations contained in Paragraph 50.

51. McKesson denies the allegations contained in Paragraph 51.

52. McKesson denies the allegations contained in Paragraph 52.

53. McKesson denies the allegations contained in Paragraph 53.

54. McKesson denies the allegations contained in Paragraph 54.

55. McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 and therefore denies the same.

56. McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 and therefore denies the same.

1 57. McKesson denies the allegations contained in Paragraph 57.

2 58. McKesson denies the allegations contained in Paragraph 58.

3 59. McKesson denies the allegations contained in Paragraph 59.

4 60. McKesson is without knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 60 and therefore denies the same.

6 61. McKesson denies the allegations contained in Paragraph 61.

7 62. McKesson is without knowledge or information sufficient to form a belief as to
8 the truth of the allegations contained in Paragraph 62 and therefore denies the same.

9 63. McKesson denies the allegations contained in Paragraph 63.

10 64. McKesson denies the allegations contained in Paragraph 64.

11 65. McKesson denies the allegations contained in Paragraph 65.

12 66. McKesson denies the allegations contained in Paragraph 66.

13 **DISCOVERY RULE & FRAUDULENT CONCEALMENT**

14 67. McKesson denies the allegations contained in Paragraph 67.

15 68. McKesson denies the allegations contained in Paragraph 68.

16 **FIRST CAUSE OF ACTION**

17 **(Against Manufacturing and Distributor Defendants)**

18 **STRICT LIABILITY: FAILURE TO WARN**

19 69. McKesson hereby incorporates its responses to the allegations contained in
20 Paragraphs 1 through 68 as if set forth fully herein.

21 70. Paragraph 70 is directed towards the manufacturing defendants, and therefore
22 requires no response from McKesson; to the extent this allegation requires a response from
23 McKesson, McKesson denies the allegations contained in Paragraph 70.

24 71. Paragraph 71 is directed towards the manufacturing defendants, and therefore
25 requires no response from McKesson; to the extent this allegation requires a response from
26 McKesson, McKesson denies the allegations contained in Paragraph 71.

27 **SECOND CAUSE OF ACTION**

28 **(Against Manufacturing and Distributor Defendants)**

NEGLIGENCE

72. McKesson hereby incorporates its responses to the allegations contained in

1 Paragraphs 1 through 71 as if set forth fully herein.

2 73. McKesson denies the allegations contained in Paragraph 73.

3 74. McKesson denies the allegations contained in Paragraph 74.

4 75. McKesson denies the allegations contained in Paragraph 75.

5 76. McKesson denies the allegations contained in Paragraph 76.

6 77. McKesson denies the allegations contained in Paragraph 77.

7 78. McKesson denies the allegations contained in Paragraph 78.

8 79. McKesson denies the allegations contained in Paragraph 79.

9 **THIRD CAUSE OF ACTION**
10 **(Against Imaging Facility Defendants)**
11 **NEGLIGENCE**

12 80. McKesson hereby incorporates its responses to the allegations contained in
13 Paragraphs 1 through 79 as if set forth fully herein.

14 81. Paragraph 81 is directed towards other defendants and thus requires no response;
15 to the extent this allegation requires a response from McKesson, McKesson is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
17 Paragraph 81 and therefore denies the same.

18 82. Paragraph 82 is directed towards other defendants and thus requires no response;
19 to the extent this allegation requires a response from McKesson, McKesson is without
20 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
21 Paragraph 82 and therefore denies the same.

22 83. Paragraph 83 is directed towards other defendants and thus requires no response;
23 to the extent this allegation requires a response from McKesson, McKesson is without
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
25 Paragraph 83 and therefore denies the same.

26 84. Paragraph 84 is directed towards other defendants and thus requires no response;
27 to the extent this allegation requires a response from McKesson, McKesson is without
28 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
Paragraph 84 and therefore denies the same.

1 85. Paragraph 85 is directed towards other defendants and thus requires no response;
2 to the extent this allegation requires a response from McKesson, McKesson is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
4 Paragraph 85 and therefore denies the same.

5 86. Paragraph 86 is directed towards other defendants and thus requires no response;
6 to the extent this allegation requires a response from McKesson, McKesson is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
8 Paragraph 86 and therefore denies the same.

9 87. Paragraph 87 is directed towards other defendants and thus requires no response;
10 to the extent this allegation requires a response from McKesson, McKesson is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
12 Paragraph 87 and therefore denies the same.

13 88. Paragraph 88 is directed towards other defendants and thus requires no response;
14 to the extent this allegation requires a response from McKesson, McKesson is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
16 Paragraph 88 and therefore denies the same.

17 **FOURTH CAUSE OF ACTION**
18 **(Against Imaging Facility Defendants)**
19 **BREACH OF EXPRESS WARRANT**

20 89. McKesson hereby incorporates its responses to the allegations contained in
21 Paragraphs 1 through 88 as if set forth fully herein.

22 90. Paragraph 90 is directed towards other defendants and thus requires no response;
23 to the extent this allegation requires a response from McKesson, McKesson is without
24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
25 Paragraph 90 and therefore denies the same.

26 91. Paragraph 91 is directed towards other defendants and thus requires no response;
27 to the extent this allegation requires a response from McKesson, McKesson is without
28 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
Paragraph 91 and therefore denies the same.

1 92. Paragraph 92 is directed towards other defendants and thus requires no response;
 2 to the extent this allegation requires a response from McKesson, McKesson is without
 3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 4 Paragraph 92 and therefore denies the same.

5 **FIFTH CAUSE OF ACTION**
 6 **(Against Imaging Facility Defendants)**
 7 **BREACH OF IMPLIED WARRANTY**

8 93. McKesson hereby incorporates its responses to the allegations contained in
 9 Paragraphs 1 through 92 as if set forth fully herein.

10 94. Paragraph 94 is directed towards other defendants and thus requires no response;
 11 to the extent this allegation requires a response from McKesson, McKesson is without
 12 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 13 Paragraph 94 and therefore denies the same.

14 95. Paragraph 95 is directed towards other defendants and thus requires no response;
 15 to the extent this allegation requires a response from McKesson, McKesson is without
 16 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 17 Paragraph 95 and therefore denies the same.

18 96. Paragraph 96 is directed towards other defendants and thus requires no response;
 19 to the extent this allegation requires a response from McKesson, McKesson is without
 20 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 21 Paragraph 96 and therefore denies the same.

22 97. Paragraph 97 is directed towards other defendants and thus requires no response;
 23 to the extent this allegation requires a response from McKesson, McKesson is without
 24 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 25 Paragraph 97 and therefore denies the same.

26 **SIXTH CAUSE OF ACTION**
 27 **(Against Manufacturing Defendants)**
 28 **FRAUD**

29 98. McKesson hereby incorporates its responses to the allegations contained in
 30 Paragraphs 1 through 97 as if set forth fully herein.

1 99. Paragraph 99 is directed towards other defendants and thus requires no response;
2 to the extent this allegation requires a response from McKesson, McKesson is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
4 Paragraph 99 and therefore denies the same.

5 100. Paragraph 100 is directed towards other defendants and thus requires no response;
6 to the extent this allegation requires a response from McKesson, McKesson is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
8 Paragraph 100 and therefore denies the same.

9 101. Paragraph 101 is directed towards other defendants and thus requires no response;
10 to the extent this allegation requires a response from McKesson, McKesson is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
12 Paragraph 101 and therefore denies the same.

13 102. Paragraph 102 is directed towards other defendants and thus requires no response;
14 to the extent this allegation requires a response from McKesson, McKesson is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
16 Paragraph 102 and therefore denies the same.

17 103. Paragraph 103 is directed towards other defendants and thus requires no response;
18 to the extent this allegation requires a response from McKesson, McKesson is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
20 Paragraph 103 and therefore denies the same.

21 104. Paragraph 104 is directed towards other defendants and thus requires no response;
22 to the extent this allegation requires a response from McKesson, McKesson is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
24 Paragraph 104 and therefore denies the same.

25 105. Paragraph 105 is directed towards other defendants and thus requires no response;
26 to the extent this allegation requires a response from McKesson, McKesson is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
28 Paragraph 105 and therefore denies the same.

1 106. Paragraph 106 is directed towards other defendants and thus requires no response;
 2 to the extent this allegation requires a response from McKesson, McKesson is without
 3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 4 Paragraph 106 and therefore denies the same.

5 107. Paragraph 107 is directed towards other defendants and thus requires no response;
 6 to the extent this allegation requires a response from McKesson, McKesson is without
 7 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 8 Paragraph 107 and therefore denies the same.

9 108. Paragraph 108 contains legal conclusions to which no response is required.
 10 Paragraph 108 is also directed towards other defendants and thus requires no response; to the
 11 extent this allegation requires a response from McKesson, McKesson is without knowledge or
 12 information sufficient to form a belief as to the truth of the allegations contained in Paragraph
 13 108 and therefore denies the same.

14 **SEVENTH CAUSE OF ACTION**
 15 **(Against Manufacturing Defendants)**
 16 **FRAUD: CONCEALMENT, SUPPRESSION OR**
 OMISSION OF MATERIAL FACTS

17 109. McKesson hereby incorporates its responses to the allegations contained in
 18 Paragraphs 1 through 108 as if set forth fully herein.

19 110. Paragraph 110 is directed towards other defendants and thus requires no response;
 20 to the extent this allegation requires a response from McKesson, McKesson is without
 21 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 22 Paragraph 110 and therefore denies the same.

23 111. Paragraph 111 is directed towards other defendants and thus requires no response;
 24 to the extent this allegation requires a response from McKesson, McKesson is without
 25 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
 26 Paragraph 111 and therefore denies the same.

27 112. Paragraph 112 is directed towards other defendants and thus requires no response;
 28 to the extent this allegation requires a response from McKesson, McKesson is without

1 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
2 Paragraph 112 and therefore denies the same.

3 **EIGHTH CAUSE OF ACTION**
4 **(Against Manufacturing Defendants)**
5 **NEGLIGENT MISREPRESENTATION**

6 113. McKesson hereby incorporates its responses to the allegations contained in
7 Paragraphs 1 through 112 as if set forth fully herein.

8 114. Paragraph 114 is directed towards other defendants and thus requires no response;
9 to the extent this allegation requires a response from McKesson, McKesson is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 Paragraph 114 and therefore denies the same.

12 115. Paragraph 115 is directed towards other defendants and thus requires no response;
13 to the extent this allegation requires a response from McKesson, McKesson is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
15 Paragraph 115 and therefore denies the same.

16 116. Paragraph 116 is directed towards other defendants and thus requires no response;
17 to the extent this allegation requires a response from McKesson, McKesson is without
18 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
19 Paragraph 116 and therefore denies the same.

20 117. Paragraph 117 is directed towards other defendants and thus requires no response;
21 to the extent this allegation requires a response from McKesson, McKesson is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
23 Paragraph 117 and therefore denies the same.

24 118. Paragraph 118 is directed towards other defendants and thus requires no response;
25 to the extent this allegation requires a response from McKesson, McKesson is without
26 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
27 Paragraph 118 and therefore denies the same.

28 ////

////

NINTH CAUSE OF ACTION
(Against All Defendants)
NEGLIGENT MISREPRESENTATION

119. McKesson hereby incorporates its responses to the allegations contained in Paragraphs 1 through 118 as if set forth fully herein.

120. Paragraph 120 contains legal conclusions to which no response is required. To the extent that a response is required, McKesson denies the allegations contained in Paragraph 120.

121. McKesson denies the allegations contained in Paragraph 121, including subparts a through d.

122. McKesson denies the allegations contained in Paragraph 122.

123. McKesson denies the allegations contained in Paragraph 123.

TENTH CAUSE OF ACTION
(Against All Defendants)
LOSS OF CONSORTIUM

124. McKesson hereby incorporates its responses to the allegations contained in Paragraphs 1 through 123 as if set forth fully herein.

125. McKesson is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 125 and therefore denies the same.

126. McKesson denies the allegations contained in Paragraph 126.

GENERAL DENIAL

127. McKesson denies each and every statement, allegation, and averment contained in the Complaint that has not been expressly admitted herein.

128. Discovery and investigation may reveal that one or more of the following additional defenses are available to McKesson in this matter. McKesson accordingly asserts the following defenses. Upon completion of discovery, if the facts warrant, McKesson may withdraw any of these defenses as may be appropriate. McKesson further reserves the right to amend this Answer to assert additional defenses and other claims as discovery proceeds.

////

////

1 Further answering, and by way of additional defense, McKesson states as follows:

2 **DEFENSES**

3 129. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

4 130. Plaintiffs' claims are barred in whole or in part by the applicable statutes of
5 limitations, statutes of repose, and/or by the doctrines of laches, estoppel, waiver, unclean hands,
6 or ratification.

7 131. Adequate warnings were provided to Paul J. Gerber's physicians and other
8 medical providers; therefore, any claims by Plaintiffs for inadequate warnings are barred by the
9 doctrines of learned intermediary and/or sophisticated user.

10 132. Plaintiffs' claims based on inadequate warning are barred even if adequate
11 warnings with respect to known or potential dangers or risks associated with the use of
12 Omniscan™, were not provided, which is denied, because physicians and other medical
13 providers prescribing Omniscan™ either knew or should have known of the potential or known
14 dangers or risks, and there is no duty to warn members of a profession against dangers known or
15 which should be known to members of the profession.

16 133. Plaintiffs' claims are barred in whole or in part because the products, methods,
17 standards, and/or techniques used in manufacturing, designing, marketing, and/or labeling of the
18 products at issue complied with and/or were in conformity with the state of the art at the time
19 they were manufactured, designed, marketed, and/or labeled.

20 134. Plaintiffs' claims are barred in whole or in part because the manufacture, labeling
21 and sale of Omniscan™ was and is controlled by federal law, and McKesson at all relevant times
22 complied with applicable statutes and with the requirements of the FDA.

23 135. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs have
24 released, settled, entered into an accord and satisfaction, or otherwise compromised their claims.

25 136. Plaintiffs' claims are barred in whole or in part by Paul J. Gerber's assumption of
26 the risk associated with the purchase and/or use of the product, and is imputed to plaintiff Miriam
27 Goldberg.

28 ////

1 137. Plaintiffs' claims are barred in whole or in part by product misuse by Plaintiff
2 Paul Jay Gerber or his physician including, among other things, their failure to follow warnings
3 and/or failure to follow instructions.

4 138. Plaintiffs' claims under state law are barred by the doctrine of federal preemption.

5 139. Plaintiffs' claims are barred in whole or in part by the deference given to the
6 primary jurisdiction of the FDA over the subject pharmaceutical product at issue under
7 applicable federal laws, rules, and regulations.

8 140. Plaintiffs' claims are barred in whole or in part under the doctrine described in the
9 Restatement (Second) of Torts § 402A cmt. k.

10 141. Plaintiffs' claims are barred in whole or in part because the pharmaceutical
11 product at issue provides net benefits for a class of patients within the meaning of Restatement
12 (Third) of Torts: Products Liability § 6 cmt. f.

13 142. To the extent Plaintiffs' claims related to McKesson's advertising, marketing,
14 public statements, lobbying or other activities protected by the First Amendment to the United
15 States Constitution and the California Constitution, such claims are barred.

16 143. Plaintiffs failed to notify McKesson of any alleged breach of warranty within a
17 reasonable time after she discovered or should have discovered any such alleged breach and are
18 therefore barred from recovery on such claims.

19 144. Any warranties made by McKesson to Plaintiffs were disclaimed.

20 145. Any claim for breach of express warranty must fail because Plaintiff failed to
21 allege any representation about the product at issue giving rise to an express warranty.

22 146. Any claim for breach of implied warranty fails because the product at issue was
23 used for its ordinary purpose.

24 147. Plaintiffs' breach of warranty claims are barred because there is a lack of privity
25 between Plaintiffs and McKesson.

26 148. McKesson specifically pleads all defenses under the Uniform Commercial Code
27 now existing or which may arise in the future.

28 149. Plaintiffs' claims for breach of warranty, expressed or implied, are barred by the

1 applicable provisions of the California Commercial Code.

2 150. Plaintiffs have failed to join all indispensable parties; as a result of this failure,
3 complete relief cannot be accorded to those already parties to this action and will result in
4 prejudice to McKesson

5 151. Plaintiffs' claims and recovery are barred, reduced and/or limited pursuant to
6 applicable constitutional, statutory, and common law regarding limitations of awards and
7 recovery.

8 152. Plaintiffs' claims are barred or reduced by the contributory and/or comparative
9 negligence, and/or contributory and/or comparative fault.

10 153. Plaintiffs' damages, if any, were caused solely or partially by some third person or
11 third party for whom McKesson is not legally responsible.

12 154. Plaintiffs' damages, if any, resulted from new and independent, unforeseeable,
13 superseding, or intervening causes unrelated to the conduct of McKesson, or the products at
14 issue.

15 155. If McKesson provided any product alleged to have been defective, as alleged in
16 the Complaint, McKesson supplied and/or distributed such product by and through other
17 intermediaries, including plaintiffs' and/or other named and unnamed defendants, and did not
18 package, repackage, or label the product in any way, and provided all warnings regarding the
19 product to such intermediaries as they were received from the product manufacturer and/or other
20 up stream suppliers without any additions, deletions, or alterations of any kind to the warnings.

21 156. Plaintiffs' damages, if any, were the result of pre-existing conditions unrelated to
22 any conduct of McKesson or the products at issue.

23 157. Plaintiffs' damages, if any, were caused by changes and/or alterations to the
24 McKesson's products, made by persons not within McKesson's control.

25 158. McKesson's liability, if any, for non-economic loss is limited to its equitable
26 share, determined in accordance with the relative culpability of all persons or entities
27 contributing to Plaintiffs' total non-economic loss, if any, including those over whom Plaintiffs
28 could have obtained personal jurisdiction with due diligence.

1 159. McKesson alleges that the provisions of California Civil Code § 1431.2 are
2 applicable to the Complaint and each cause of action therein.

3 160. Plaintiffs' non-economic loss must be allocated in accordance with the provisions
4 of Cal. Civil Code § 1431.2 ("Proposition 51").

5 161. Plaintiffs' damages, if any, must be reduced by any amount of damages legally
6 caused by Plaintiffs' own failure to mitigate such damages.

7 162. Plaintiffs' damages, if any, are not recoverable because they are legally too
8 remote, indirect, and speculative.

9 163. Plaintiffs' Complaint fails to state a claim upon which relief can be granted for
10 punitive or exemplary damages.

11 164. McKesson denies any conduct for which punitive or exemplary damages could or
12 should be awarded and deny that Plaintiffs have produced evidence sufficient to support or
13 sustain the imposition of punitive damages pursuant to the applicable standard(s) of proof.

14 165. Plaintiffs' claims seeking punitive damages violate the substantive and procedural
15 aspects of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States
16 Constitution, the Equal Protection Clause, the Excessive Fines Clause, and the cognate
17 provisions of the California Constitution.

18 166. Any award of punitive or exemplary damages is barred to the extent that it is
19 inconsistent with the standards and limitations set for in *BMW of North American, Inc. v. Gore*,
20 517 U.S. 559, 134 L.Ed. 2d 809, 116 S.Ct. 1589 (1996); *State Farm Mutual Automobile*
21 *Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Phillip Morris USA v. Williams*, 127 S.Ct.
22 1057 (2007).

23 167. No act or alleged omission of McKesson was vile, base, willful, malicious,
24 wanton, oppressive or fraudulent, or done with a conscious disregard for the health, safety and
25 right of Plaintiffs and other, or with actual malice, fraud or oppression as defined in Cal. Civil
26 Code § 3294, and Plaintiffs' complaint fails to state a claim upon which relief can be granted for
27 punitive or exemplary damages. Plaintiffs' Complaint seeks damages in excess of those
28 permitted by law. McKesson asserts any statutory or judicial protection from punitive or

1 exemplary damages that is available under the applicable law, and any award of punitive or
2 exemplary damages is barred.

3 168. Any verdict or judgment that might be recovered by Plaintiffs must be reduced by
4 those amounts that have indemnified, or will in the future indemnify, Plaintiffs in whole or in
5 part for any past or future claimed economic loss from any collateral source such as insurance,
6 social security, workers' compensation, or employee benefit programs.

7 169. Plaintiffs' claims are barred by the applicable statute of limitation, including but
8 not limited to Cal. Code of Civil Procedure former § 340, subd. 3, or in the alternative, Cal. Code
9 of Civil Procedure §§ 335.1, 340.5, 340.8 and/or 343.

10 170. McKesson is not liable to Plaintiffs because it never manufactured, sold, or
11 administered any gadolinium-based contrast agent to the Plaintiffs.

12 171. McKesson owed no duty to Plaintiffs, and in any event, violated no duty that it
13 may have owed to Plaintiffs.

14 172. Any and all injuries suffered by Plaintiffs, in fact of which is expressly denied by
15 McKesson, were in direct and proximate result of sensitivities, medical conditions, reactions
16 and/or idiosyncrasies peculiar to Plaintiff Paul Jay Gerber that were unknown, unknowable, or
17 not reasonably foreseeable to McKesson, and not as a direct and proximate result of wrongful
18 convictions on the part of the McKesson, the fact of which is expressly denied by McKesson.

19 173. No act or omission of McKesson was a substantial factor in bringing about the
20 alleged injuries of Plaintiffs, nor was any such act or omission a contributing cause thereof, and
21 any alleged acts or omissions of McKesson were superseded by the acts or omissions of others,
22 including Plaintiffs, which were the independent, intervening and proximate cause of any injury,
23 damage or loss sustained by Plaintiffs.

24 174. Plaintiffs' cause of action for alleged violation of the California Consumer Legal
25 Remedies Act ("CLRA"), Cal Civil Code § 1750, et seq., is barred because Plaintiffs failed to
26 give proper notice as mandated by Cal. Civil Code § 1782(a)(1). Since strict compliance with
27 the notice provisions of the CLRA is required, Plaintiffs' CLRA cause of action must be
28 dismissed with prejudice.

175. Plaintiffs' cause of action for alleged violation of the California Consumer Legal Remedies Act ("CLRA"), Cal Civil Code § 1750, et seq., is barred because Plaintiffs failed to comply with the affidavit requirement of Cal. Civil Code § 1780(c). Since strict compliance with the notice provisions of the CLRA is required, Plaintiffs' CLRA cause of action must be dismissed with prejudice.

176. Plaintiffs' Complaint fails to state a claim under the California Consumer Legal Remedies Act ("CLRA"), Cal Civil Code § 1750, et seq., because the CLRA is inapplicable to a pharmaceutical products liability action.

177. Plaintiffs' claims are barred in whole or in part because Plaintiffs consented to the alleged wrongful conduct.

178. McKesson adopts and incorporates by reference each and every other or additional defense that is or may be applicable to McKesson that has been or may be pleaded by any other defendants to this action not otherwise set forth herein.

DATED: January 31, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Michael L. Fox

Charles T. Sheldon
Michael L. Fox

and

Marsha M. Piccone (pro hac vice pending)
piccone@wtklaw.com
John M. Fitzpatrick (pro hac vice pending)
fitzpatrick@wtklaw.com
Galen D. Bellamy (SBN #231792)
bellamy@wtklaw.com
Renee A. Carmody (pro hac vice pending)
carmody@wtklaw.com
WHEELER TRIGG KENNEDY LLP
1801 California Street, Suite 3600
Denver, Colorado 80202
Telephone: (303) 244-1800
Facsimile: (303) 244-1879

Attorneys for Defendant
McKESSON CORPORATION

DEMAND FOR JURY TRIAL

McKesson hereby demands a trial by jury of the captioned matter.

DATED: January 31, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Michael L. Fox

Charles T. Sheldon

Michael L. Fox

and

Marsha M. Piccone (pro hac vice pending)

piccone@wtklaw.com

John M. Fitzpatrick (pro hac vice pending)

fitzpatrick@wtklaw.com

Galen D. Bellamy (SBN #231792)

bellamy@wtklaw.com

Renee A. Carmody (pro hac vice pending)

carmody@wtklaw.com

WHEELER TRIGG KENNEDY LLP

1801 California Street, Suite 3600

Denver, Colorado 80202

Telephone: (303) 244-1800

Facsimile: (303) 244-1879

Attorneys for Defendant

McKESSON CORPORATION